

HOUSE BILL REPORT

HB 3227

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to forestry resources and rural development, establishing a system of collective bargaining for loggers and haulers of logs.

Brief Description: Regulating rates of compensation for forest products harvesters or haulers.

Sponsors: Representative Conway.

Brief History:

Committee Activity:

Commerce & Labor: 2/1/06, 2/2/06 [DPS].

Brief Summary of Substitute Bill

- Permits log harvesters and log haulers to form cooperative associations to participate in a negotiation process (that includes arbitration) with forest landowners over the rates of compensation that, if approved by the Utilities and Transportation Commission, apply to contracts for log harvesting or hauling.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 4 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Chris Cordes (786-7103).

Background:

Regulation of Transportation Rates

Until 1995, the Utilities and Transportation Commission (UTC) regulated certain rates related to transportation of goods on public highways, such as log hauling rates. The UTC ended its regulation in 1995 after the Congress enacted the Federal Aviation Administration Authorization Act of 1994 (P.L. 103-305). The Act included a provision preempting the states and their political subdivisions from enforcing any law related to price, route, or service when a carrier affiliated with an air carrier is transporting property by aircraft or motor vehicle.

Antitrust Laws

Under federal law and most states' laws, unreasonable restraints of trade by competitors are prohibited. These laws are generally referred to as antitrust laws. For example, the federal Sherman Antitrust Act prohibits agreements among competitors to fix prices, rig bids, or allocate customers, and prohibits monopolizing any part of interstate commerce with anti-competitive conduct. Similar anticompetitive activities are regulated in Washington under the Washington Consumer Protection Act and pursuant to Article 12, section 22 of the State Constitution, which prohibits an association of persons making a contract for the purpose of fixing the price of any product.

Certain state programs that would otherwise violate the federal antitrust laws are exempt from those laws. The U.S. Supreme Court has recognized this exemption, explaining that federal antitrust laws were not intended by Congress to apply to conduct sanctioned by state governments.

The test the courts use to determine whether conduct is protected under the state action exemption requires that: (1) there be a clear and affirmative state policy, implicit or explicit in the law, to allow anticompetitive conduct; and (2) the state actively supervise the conduct by having authority, and also by using it, to approve or disapprove of particular conduct.

Summary of Substitute Bill:

Log harvesters and haulers are authorized to form cooperative associations to meet, confer, and share information, and take other supporting collective action, to establish compensation rates for log harvesting and log hauling services. Resulting rate determinations are submitted to the Utilities and Transportation Commission (Commission) for approval. The Commission must give notice to those requesting such notice, and these persons have 30 days to comment on the rate submission. The Commission must reject any rate submission that was not conducted or arbitrated in an arm's length process. Once approved, a rate is in effect in the relevant labor market for one calendar year.

Rates, accompanied by specified information, are submitted to the Commission in one of two ways:

- The cooperative association meets and negotiates with forest landowners to determine reasonable rates, and the negotiations results are mutually proposed to the Commission.
- If the negotiations between the cooperative association and the forest landowners are not successful, either party may demand binding arbitration. The arbitrator must award one of the parties' proposals, and that award is forwarded to the Commission.

In approving rates for any given forest landowner, the Commission must consider:

- the harvester's or hauler's costs, including wages, overhead, fuel, insurance, pensions, and the cost of replacing equipment;
- environmental and highway laws;

- the impact of the award on the competitive position of the landowner in the market area or competing market areas;
- a fair return on investment for all parties;
- the species of tree, type of machinery, typography of harvesting sites, and method of harvesting involved;
- the amount of hauling on private or public roads, including travel time and road conditions; and
- safety considerations.

"Forest landowner" is defined as a government or a person or business organization registered with the state of Washington that owns directly, or through affiliated persons, or possesses economic control over, more than 100,000 acres in a labor market area. Two labor market areas are defined as the counties in specified forest excise tax hauling areas determined by the Commissioner of Revenue: One labor market area includes hauling areas 1 through 5 and 10 (generally, western Washington); and the other labor market area includes hauling areas 6 and 7 (generally, counties in eastern Washington).

A forest landowner violates these provisions if the landowner pays rates for harvesting or hauling services that are other than the approved rates, if any, or discriminates against a person that initiates or participates in a rate determination proceeding. However, these provisions do not prohibit a contract between a landowner and an individual harvester or hauler that pays rates other than Commission-approved rates if no Commission-approved rates apply to the service or to the area.

It is stated that these provisions are intended to displace existing market forces based on a legislative finding that such forces are insufficient to permit the affected market to function normally. Activities under these provisions do not constitute illegal restraint of trade, as long as the activities are for the purpose of participating in a rate determination proceeding. A contract entered into under negotiations between a forest landowner and a cooperative group of harvesters or haulers is not illegal restraint of trade if the resulting price is approved by the Commission.

Substitute Bill Compared to Original Bill:

The substitute changes the agency responsible for approving rates from the Department of Labor and Industries to the Utilities and Transportation Commission, and adds a severability clause.

Appropriation: None.

Fiscal Note: Requested on January 29, 2006.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: There is a need to level the playing field. Since 1995, no rate structure has been in place and a fair and equitable rate needs to be negotiated. After deregulation, the relationship between the truckers and the landowners has deteriorated to a master-servant relationship. There have been no rate increases since 1990, so that the only way to increase revenue is to increase investment in equipment. As one example, gross revenues of \$144,000 only resulted in \$28,000 in profit. With fuel prices so high, safety has become an issue because all the money goes to fuel, not to repair. This bill will set in motion a vehicle to get agreement with the landowners, which the state would have to review and approve. The landowners will not talk directly with the truckers, and if anyone pushes for higher rates, they threaten to file antitrust lawsuits or to hire someone else. Truckers cannot bid for other jobs if the landowner owns all the land. There is a need for a third-party to express concerns to. This bill represents a desperation shot. The industry should solve its own problem, but has not been able to. Truckers and loggers are supporting each other in this effort. About two-thirds of the truckers in the state belong to the cooperative.

Testimony Against: The timber industry is the third largest industry in the state. This bill sets a large precedent, using an underlying premise that these independent contractors are "employees" based on the nature of the economic situation. This premise is not accurate, and the approach could cause problems and unintended consequences across all labor law. The Department of Labor and Industries (Department) is not in the business of second-guessing business. The bill lacks criteria for the Department to make determinations. Any confidential information that the Department may obtain is not protected from public disclosure. There would be a fiscal impact on the workers' compensation funds to pay for the program. The timber industry market is large and diverse and fully functioning. The labor market areas defined in the bill are not relevant to actual practice. Loggers are well-paid in Washington according to federal labor statistics. One consequence could be the breakup of large holdings into small lots that would be lost to timber growing. It is in everyone's best interest to solve the problem in the industry. Fuel surcharges have been implemented and other issues are being worked on. Standard rates for logging will not work because the sites are so variable. This is a very complex marketplace with lots of players. This could create barriers to new competition, and it discriminates based on the size of the landowner.

Persons Testifying: (In support) Jim Nielsen, Brian Gallagher, and Lon Michaels, Northwest Log Truck Cooperative; Bill Pickell, Washington Contract Loggers Association; and Steve Fluke, International Association of Machinists and Aerospace Workers.

(Opposed) Kris Tefft, Association of Washington Business; Bill Garvin, Washington Forest Protection Association; Bob Dick, American Forest Resource Council; and Rich Winnegar and Bruce Beckett, Weyerhaeuser.

Persons Signed In To Testify But Not Testifying: None.